statements; and collecting additional information that we deemed necessary for making out final determination.

Suspension of liquidation

The estimated net subsidy rate for industrial belts is 0.41 percent *ad valorem*. Under section 355.7 of our regulations, an aggregate net subsidy of less than 0.5 percent *ad valorem* is considered *de minimis*.

Since the suspension of liquidation was discontinued on April 1, 1989, 120 days after our preliminary determination, there is no need to instruct the U.S. Customs Service to discontinue the suspension of liquidation. However, we are instructing the U.S. Customs Service to refund all estimated countervailing duties deposited on all unliquidated entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between September 3, 1988, and March 31, 1989.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since we have determined that only *de minimis* countervailing benefits are being provided to manufacturers, producer or exporters in Korea of industrial belts, this investigation will be terminated upon the publication of this notice in the **Federal Register**. Hence, the ITC is not required to make a final injury determination.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

April 11, 1989.

[FR Doc. 89-9260 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-803]

Final Negative Countervailing Duty Determination: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that *de minimis* benefits which constitute bounties or grants within the meaning of the U.S. countervailing duty law are being provided to manufacturers, producers, or exporters in Singapore of industrial belts and components and parts thereof, whether cured or uncured (industrial belts), as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 0.35 percent *ad valorem*. Since this rate is *de minimis*, our final countervailing duty determination is negative.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that *de minimis* countervailable benefits, within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to Singaporean manufacturers, producers, or exporters of industrial belts. For purposes of this investigation, the following program is found to confer bounties or grants:

- Short-term loans provided under the Monetary Authority of Singapore Rediscount Facility

Although we have determined this program to be countervailable, the respondent received *de minimis* benefits during the review period. Since the countervailable benefits are *de minimis*, we determine that no benefits which constitute bounties or grants within the meaning of section 701 of the Act are being provided to Singaporean manufacturers, producers, or exporters of industrial belts. The review period corresponds to the respondent company's fiscal year, April 1, 1987, through March 31, 1988.

Case History

Since the last **Federal Register** publication pertaining to this investigation [Preliminary Negative Countervailing Duty Determination: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured from Singapore 53 FR 48677, December 2, 1988) Preliminary Determination)], the following events have occurred. On December 9, 1988, petitioner filed a request for alignment of the countervailing duty and antidumping final determinations. This postponement was approved under section 705 of the Act and published in the **Federal Register** on February 13, 1989 (54 FR 6562).

We conducted verification in Singapore, from January 31 through February 2, 1989, of the questionnaire responses of the Government of Singapore (GOS) and Mitsuboshi Belts (Singapore) Pte. Ltd. (MBS).

Petitioner and respondents requested a public hearing, which was held on March 16, 1989. Pre-hearing briefs were filed by petitioner and respondents on March 15 and February 24, respectively. Both parties filed post-hearing briefs on March 28, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-heading are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210 358.0290 358.0610 358.0690 358.0800 358.0900 358.1100 358.1400 358.1600, 657.2520, 773.3510, and 773.3520 and currently classifiable under HTS item numbers 3926.9055, 3926.9056, 3926.9057, 3926.9059, 3926.9060, 4010.1010, 4010.1050, 4010.9111, 4010.9115, 4010.9119, 4010.9150, 4010.9911, 4010.9915, 4010.9919, 4010.9950, 5910.0010, 5910.0090 and 7326.2000.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is April 1, 1987 to March 31, 1988, which corresponds to the fiscal year of the respondent company.

Based upon our analysis of the petition, the responses to our questionnaires, verification, and written comments filed by the petitioner and respondents, we determine the following:

I. Program Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Singapore of industrial belts under the following program

Monetary Authority of Singapore (MAS) Rediscount Facility

Under the MAS Rediscounting Scheme, the MAS rediscounts pre-export and export bills of exchange. A qualifying exporter applies for financing from an approved bank, which then discounts the exporter's bills at an MAS-established discount rate plus a maximum spread of 1.5 percent. The bank subsequently rediscounts the bills with the MAS, at the MAS discount rate. The usual period for financing under this program is three months.

Because this program is available only to exporters, we determine that it is countervailable to the extent that it is offered at preferential rates. To determine whether financing under this program was made at preferential rates, we compared the interest rates charged on these loans to a short-term benchmark. In deriving the short-term benchmark, we followed the same methodology explained in our recent *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders: Antifriction Bearings (Other Than Tapered Roller Bearings) and parts Thereof from Singapore*, announced on March 23, 1989. Three types of short-term financing were available, exclusively in Singapore dollars, during the review period: overdrafts, short-term loans and commercial bills. Because none of the types of short-term financing was predominant during the review period, we used a weighted average of the rates on these types of financing as our benchmark. Based on the comparison of our short-term benchmark with the MAS rates, we found that the rates on the MAS rediscount facility were preferential. Therefore, we determine this program to be countervailable.

To calculate the benefit arising from this program, we followed our short-term loan methodology, which has been applied consistently in our past determinations and which is described in more detail in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

We compared the amount of interest actually paid during the review to the amount the company would have paid at the benchmark rate. MBS utilized MAS financing on a shipment-by-shipment basis and was, therefore, able to segregate MAS loans according to product and export destination. Therefore, we allocated the total benefit attributable to U.S. sales of the subject merchandise over export sales of the subject merchandise to the United States during the review period. The estimated net bounty or grant under this program is 0.35 percent *ad valorem.*

II. Programs Determined Not to be Used

We determine, based on verified information, that the programs listed below were not used by manufacturers, producers, or exporters in Singapore of industrial belts during the review period. For a full description of these programs, see our *Preliminary Determination.*

A. Tax Incentives Under the EEIA

The EEIA offers tax incentives under the following provisions:

• Part II: Pioneer Industries

• Part IV: Expansion of Established Enterprises

• Part VI: Production of Export

• Part VII: International Trade Incentives

• Part VIII: Foreign Loans for Productive Equipment

• Part IX: Royalties, Fees and Development Contributions

• Part X: Investment Allowances

• Part XI: Warehousing and Servicing Incentives

B. Double Deduction of Export Promotion Expenses under the Income Tax Act (ITA): Sections 14B and 14C

C. Research and Development (R&D) Incentives: Section 19B and 14E of the ITA

D. Research and Development Assistance Scheme (RDAS)

E. Singapore Economic Development Board (EDB)

Comments

Comment 1: Petitioner argues that the Department should not use the three-month rate on commercial bills as the benchmark for the calculation of the benefit from MAS loans because it is not representative of short-term financing in Singapore. Petitioner states that the mere comparability of terms between MAS loans and commercial bills constitutes an insufficient basis for selecting commercial bills as the benchmark. Moreover, commercial bills are no longer a predominant form of short-term financing and they have no reserve requirements, which petitioner argues is preferential.

Respondents argue that the commercial bill rate is the appropriate benchmark because the terms on commercial bills are most comparable to the financing terms on MAS loans. Respondents refer to the commercial bill benchmark used in *Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Singapore,* (50 FR 9840, May 6, 1985) (*Textiles)* and statements made by officials in Singapore quoting commercial bills as the most comparable alternative to MAS financing. Respondents also argue that overdrafts and short-term money market loans should not be included in the benchmark because they are mainly used to finance non-commercial transactions. In addition, respondents maintain that overdrafts are often treated as unsecured long-term loans and are, therefore, an inappropriate comparison to MAS loans.

DOC Position: Four types of short-term financial instruments are available to exporters in Singapore: commercial bills, overdrafts, short-term loans and trust receipts. None of the four types of financing represented a predominant form of short-term financing. Commercial bills, although the alternative most comparable to MAS financing, represented less than six percent of total short-term financing during the review period. Therefore, for our benchmark, we used a weighted average of the three types of short-term financing available exclusively in Singapore dollars, namely, overdrafts, short-term loans and commercial bills. This weighted average best represents the market cost to an exporter of financing short-term cash needs. Trust receipts were not included in our benchmark calculation because we did not have adequate data on this type of financing. In addition, some of the financing in this category may be given in foreign currencies.

We disagree with petitioner that commercial bills should not be included in the benchmark calculation. They represent an alternative form of financing and should, therefore, be included in the weighted average. Petitioner has not explained how reserve requirements make the calculated rates on commercial bills preferential given our reliance on estimated spreads.

We also disagree with respondents' assertion regarding overdrafts. Overdrafts are, by definition, a form of short-term financing, as are short-term money market loans. As such, we included them in our benchmark calculation.

Comment 2: Petitioner argues that the Department has not verified the use or administration of Parts IX and X of the Economic Expansion Incentive Act (EEIA) and that the Department should determine on the basis of best information available that the program is contingent upon exporting and is a countervailable export program. Petitioner argues that a portion of the Ribstar poly-V belts manufactured by the respondent are industrial belts within the scope of the investigation. Because respondent stated in the questionnaire response that benefits claimed under these sections were for a product outside the scope of this investigation, petitioner argues that total benefits claimed under these sections of the EEIA should be considered as best information available and allocated over the production of industrial belts.

Respondents state that while the parent company, which is located in Japan, manufactures industrial Ribstar poly-V belts, the respondent company manufactures only automotive Ribstar poly-V belts. Therefore, any benefits claimed under Parts IX and X of the EEIA are not within the scope of the investigation. Furthermore, the benefits that were claimed were for tax year 1988 which is outside the period of investigation.

DOC Position. We verified that the Ribstar poly-V belts manufactured by MBS are automotive belts and not industrial belts and that the benefits under Parts IX and X of the EEIA were claimed outside the period of investigation. Furthermore, the benefits claimed under Part X of the EEIA did not pertain to the R&D incentives under investigation.

Comment 3: Petitioner argues that verification exhibits should be released in their entirety based on the intent of the Omnibus Trade and Competitiveness Act of 1988 (the Act of 1988), the Court's determination that computer tapes may be released under an administrative protective order (APO), and prior ITA practice of releasing verification exhibits.

Respondents argue that there is no basis for releasing business proprietary verification exhibits. Respondents state that the section of the Act quoted by petitioner contains no mention of verification exhibits, nor does the legislative history of the 1988 Act. Respondents furthermore state that access to verification exhibits has been limited to specific cases by the courts.

DOC Position: It is our policy not to release a respondent's supporting source documents under an administrative protective order when we have requested this additional information solely to further support respondents' claims. Release of such documents can be damaging to the competitive position of the respondent. If petitioners did not agree with our position, the proper remedy was to appeal the refusal to the release of verification exhibits under APO to the Court of International Trade (CIT) while this investigation was in progress (19 U.S.C. 1677f(c)(2)).

Comment 4: Petitioner asserts that, in its scope of investigation at the preliminary determination, the Department listed only four of the 18 HTS items corresponding to the nine TSUSA numbers. Petitioner requests that the Department list all 18 HTS numbers in its final determination.

DOC Position: The scope of this investigation has not changed since the initiation. The petition included nine TSUSA item numbers and, at the time, four HTS sub-headings that petitioner believed would correspond to the TSUSA numbers when the HTS system would become effective.

The Harmonized Tariff Schedule went into effect on January 1, 1989. Based on a concordance between TSUSA item numbers and HTS sub-headings listed in the January 1989 ITC publication "*The Continuity of Import and Export Trade Statistics After Implementation of the Harmonized Commodity Description and Coding System*", petitioner requested that the Department expand the four HTS sub-headings listed in our preliminary determination to eighteen sub-headings.

We asked for comments from the interested parties in this investigation concerning industrial belts covered by the eighteen HTS sub-headings. We have received no objections in this particular determination.

In our preliminary determination, as now, we note that the written descriptions of the products covered by the investigation is dispositive. The HTS numbers are provided for convenience and customs purposes as to the scope of the product coverage. Accordingly, we do not view this as a broadening of the scope of this investigation.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act, with respect to imports of industrial belts from Singapore. In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or support that (1) the alleged subsidy is inconsistent with the *Subsidy Code,* and (2) there have been massive imports of the subject merchandise over a relatively short period.

Because we determine that the benefit provided to manufacturers, producers, or exporters of industrial belts in Singapore is *de minimis,* the final determination is negative. Therefore, critical circumstances do not exist.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, tracing information in the response to source documents, accounting ledgers, and financial statements, and collecting additional information deemed necessary for making our final determinations.

ITC Notification

Since Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to these investigations. However, Singapore is a signatory to the General Agreement on Tariffs and Trade. At the time of the preliminary determination, certain products included in the scope of these investigations (*i.e.,* those classified under items 358.0610, 358.0690, 358.1400, 657.2520, 773.3510 and 773.3520 of the *Tariff Schedules of the United States Annotated*) were nondutiable. However, on January 1, 1989, Singapore lost its Generalized System of Preference status. Thus, all of the merchandise covered by this investigation is now dutiable. Consequently, even if our final determination had been affirmative, the U.S. International Trade Commission (ITC) would not have been required to make a final injury determination in this proceeding.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

April 11, 1989.

[FR Doc. 89-9261 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-802]

Final Affirmative Countervailing Duty Determination; Steel Wheels From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final affirmative countervailing duty determination.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters in Brazil of steel wheels, as described in the "Scope of Investigation" section of this notice. The estimated net subsidy and duty deposit rates are specified in the "Suspension of Liquidation" section of this notice.

We have notified the U.S. International Trade Commission (ITC) of our determination. If the ITC determines that imports of steel wheels materially injure, or threaten material injury, to a United States industry, we will direct the U.S. Customs Service to resume suspension of liquidation of all entries of steel wheels from Brazil that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the countervailing duty order, and to require a cash deposit as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Bernard Carreau, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Brazil of steel wheels. For purposes of this investigation, we find the following programs to confer subsidies:

- CACEX Preferential Working Capital Financing for Exports
- Income Tax Exemption for Export Earnings
- CIC-OPCRE 6-2-6 Financing
- BEFIEX: IPI Export Credit Premium, and Import Duty and IPI Tax Reductions
- FINEX (Resolution 509) Export Financing
- Upstream Subsidy (steel input)

We determine the estimated net subsidy to be 1.82 percent *ad valorem* for Borlem S.A. and 17.29 percent *ad valorem* for all other manufacturers, producers or exporters in Brazil of steel wheels.

Case History

Since the publication of the preliminary determination (*Steel Wheels From Brazil; Preliminary Affirmative Countervailing Duty Determination and Initiation of Upstream Subsidy Investigation*) (53 FR 43749; October 28, 1988), the following events have occurred. Respondents submitted a supplemental response containing information pertaining to Borlem do Nordeste on December 23, 1988, and a response to our upstream questionnaire on January 6, 1989. We conducted verification in Brazil, from January 25, to February 3, 1989, of the questionnaire responses of the Government of Brazil (GOB), Rockwell-Fumagalli, Borlem, S.A., Borlem do Nordeste (BNE), and Usinas Siderurgicas de Minas Gerais (USIMINAS).

Petitioner requested a public hearing. Petitioner and respondents filed pre-hearing briefs on March 1, 1989. We held a public hearing on March 3, 1989. Petitioner and respondents filed post-hearing briefs on March 27, 1989.

Scope of Investigation

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

The products covered by this investigation are steel wheels (except custom wheels), assembled or unassembled, consisting of both a disc and a rim, designed to be mounted with both tube type and tubeless pneumatic tires, in wheel diameter sizes ranging from 13.0 inches to 16.5 inches, inclusive, and generally for use on passenger automobiles, light trucks and other vehicles. In 1988, such merchandise was classifiable under item 692.3230 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item number 8708.70.80.

In our preliminary determination, we stated that "until we have sufficient information to make a definitive scope ruling, we tentatively determine that rims or discs, imported separately, are included in the scope of this investigation."

Petitioner argues that rims should be included within the scope of the order to prevent circumvention. The petition described the merchandise covered as wheels from Brazil, which included rims and centers for such wheels so as to avoid possible circumvention through the shipment of wheel components rather than finished wheels. In an October 7, 1988 letter to the department, petitioner restated this position with regard to the rims market by asserting that its "intention was not to include within the scope of the imports subject to investigation rims sold as distinct articles of commerce and, therefore, not in circumvention of an order. . . . Petitioner's concern lies with circumvention." In other submissions, petitioner was inconsistent regarding the reasons for including rims in the scope. We conclude, however, that petitioner's primary concern is circumvention.

We verified that during the period of review the only parts of steel wheels imported from Brazil into the United States were rims. Discs were not imported. These rims were purchased by unrelated custom wheel manufacturers who combined the rims with non-Brazilian discs to make custom wheels at their own facilities. The discs add significant value to the rims.

The rims that are now imported are not of concern to the petitioner. The rims that are currently being imported are used exclusively for the manufacture of custom wheels, and the petitioner has explicitly indicated that it did not wish to include custom wheels in the scope of the order (October 7, 1988 letter). Nor is it likely that imports of these rims would undermine the effectiveness of a countervailing duty or antidumping order on steel wheels. While the steel wheels that are subject to this investigation are purchased by original equipment manufacturers (i.e., automobile manufacturers), the custom wheels that incorporate the rims currently being imported are sold exclusively in the aftermarket (*i.e.*, to automobile owners).

In past cases where petitioners have raised concerns about circumvention of any resulting order, the department has specifically included parts in the scope of an investigation because of uncertainty as to the authority of the Department to include parts subsequent to the publication of an order where parts are imported to circumvent the order. See, *e.g., Cellular Mobile Telephones from Japan* (50 FR 42577 (1985)). Now, however, section 781 of the Omnibus Trade and Competitiveness Act of 1988 not only clarifies that the Department has such authority but sets forth the criteria for dealing with this type of circumvention. Therefore, notwithstanding pre-1988 Act administrative precedents, it is neither necessary nor appropriate to include rims in the scope of the proceeding at this time. If in the future there is evidence of circumvention of the order on steel wheels by importation of Brazilian rims and discs, the Department will invoke the remedies available under section 781.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring subsidies ("the review period") is calendar year 1987. Based upon our analysis of the petition, the responses to our questionnaire, verification, and written comments filed by petitioner and respondents, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers and exporters in Brazil of steel wheels under the following programs.

(1) CACEX Preferential Working Capital Financing for Exports

Under this program, the Department of Foreign Commerce ("CACEX") of the Banco do Brasil provides short-term working capital financing to exporters at preferential rates. The loans have a term of one year or less. During the period of review, Fumagalli made interest payments on CACEX loans, but Borlem did not use this program.

On August 21, 1984, resolution 950 make CACEX working capital financing available through commercial banks at prevailing market rates, with interest due at maturity. It authorized the Banco do Brasil to pay the lending institution an "equalization fee," or rebate, of up to 10 percentage points over the commercial interest rate, which we verified the lending institution passed on to the borrowers. On May 2, 1985, Resolution 1009 increased the equalization fee to 15 percentage points.

Since the interest charged on CACEX export financing under Resolutions 950 and 1009 is at prevailing market rates, this program would not be countervailable absent the equalization fee and the exemption from the IOF (a tax on financial transactions). Therefore, the interest differential for these loans is equal to the equalization fee plus the 1.5 percent IOF. Because this program provides financing at preferential rates only to exporters, we determine that it is countervailable.

We consider the benefit from loans to occur when the borrower makes the interest payments. For CACEX loans on which interest was paid during the period of review, we multiplied the interest differential by the length of the loan and the loan principal. We allocated the result over Fumagalli's total exports. On this basis, we determine the benefit from this program to be zero for Borlem and 1.10 percent *ad valorem* for Fumagalli and all other firms.

(2) Income Tax Exemption for Export Earnings

Under this program, exporters of steel wheels are eligible for an exemption from income tax on the portion of their profits attributable to exports. According to Brazilian tax law, the tax-exempt fraction of profit is calculated as the ratio of export revenue to total revenue. Because this program provides tax exemptions that are limited to exporters, we determine that it is countervailable. Fumagalli used this program in 1987, but Borlem did not.

The nominal corporate tax rate in Brazil is 35 percent. However, Brazilian tax law permits companies to reduce their income taxes by investing up to 26 percent of their tax liability in specified companies and funds. This tax credit effectively reduces the nominal 35 percent corporate tax rate. Because Fumagalli invested in the specified companies and funds, its effective tax rate was lower than the nominal 35 percent rate during the period of review.

We calculated Fumagalli's effective tax rate by dividing its net tax liability by its taxable profit. We calculated the benefit by multiplying the amount of tax-exempt profit by the effective tax rate and allocating the result over Fumagalli's total exports. On this basis, we determine the benefit from this program to be zero for Borlem and 0.39 percent *ad valorem* for Fumagalli and all other firms.

(3) CIC–OPCRE 6–2–6 (CIC–CREGE 14–11) Financing

Under its Circular CIC–CREGE 14–11, later modified by Circular CIC–OPCRE 6–2–6, the Banco do Brasil provides preferential financing to exporters on the condition that they maintain on deposit a minimum level of foreign exchange. The interest rate is based on the cost of funds to banks plus a spread of three percentage points, which is below our benchmark rate. The loans have a term of one year and a variable interest rate, which changes every quarter. Because this program provides loans at preferential rates only to exporters, we determine that it is countervailable.

Fumagalli made payments on a loan under this program during the period of review. The interest payments on this loan were made on the last day of each month, and the full principal was repaid at maturity. Borlem did not participate in this program during the review period.

Based on information gathered during verification from commercial banking sources in Brazil, we have determined that the "taxa ANBID" rate published by *Gazeta Mercantil*, a Brazilian daily financial publication, is a broader measure of the rates available for short-term financing and is a more accurate basis for calculating our benchmark than the rate for the discounting of accounts receivable used in our preliminary determination. Because of the complex calculations necessary to convert the rates on discounts of accounts receivable into an annual benchmark, certain distortions can occur that sometimes lead to a benchmark below the rate of inflation. The "taxa ANBID" is an average monthly lending rate calculated by the National Association of Brazilian Investment Banks (ANBID) and is based on a survey of the monthly rates on short-term loans charged by Brazilian commerical banks. We calculated our annual average benchmark by compounding the "taxa ANBID" rate published for each month during 1987.

To calculate the benefit, we compared the benchmark with the preferential rate and multiplied the differential by the term of the loan and the loan principal. We then divided the result by Fumagalli's total exports. On this basis, we determine the benefit from this program to be zero for Borlem and 0.14 percent *ad valorem* for Fumagalli and all other firms.

Because we verified that, effective September 20, 1988, the interest rate on all CIC–OPCRE 6–2–6 loans was equal to the ANBID rate (our commercial benchmark rate), we determine that these loans are not longer preferential. Therefore, for purposes of the cash deposit of estimated countervailing duties, we determine the benefit from this program to be zero for all firms.

(4) BEFIEX

The Commission for the Granting of Fiscal Benefits to Special Export Programs ("BEFIEX") allows Brazilian exporters, in exchange for export commitments, to take advantage of several types of benefits, such as import duty reductions, an IPI export credit premium, and tax exemptions or tax credits. Because these benefits are provided only to exporters, we determine that this program is countervailable.

(a) *The IPI Export Credit Premium.* This benefit is a cash payment by the Brazilian government to exporters. The amount of the payment is a fixed percentage of the f.o.b. price of the exported merchandise. The payment is made through the bank involved in the export transaction. Fumagalli was eligible for the maximum IPI export credit premium, which was 15 percent during the period of review. Borlem was not eligible to receive this benefit during the period of review.

We calculated the benefit by dividing the amount of IPI credit premiums received by Fumagalli on shipments of the merchandise to the United States by the company's exports of the merchandise to the United States. On this basis, we determine the benefit from this program to be zero for Borlem and 12.47 percent *ad valorem* for Fumagalli and all other firms.

(b) *Import Duty and IPI Tax Reductions on Imported Capital Equipment.* Fumagalli received reductions of customs duties and the IPI tax on imported capital equipment used in the manufacture of the subject merchandise during the review period.

To calculate the benefit, we divided the total amount of the reductions received in 1987 by Fumagalli's total exports in 1987. On this basis, we determine the benefit to be zero for Borlem and 0.43 percent *ad valorem* for Fumagalli and all other firms.

(5) FINEX Export Financing

Resolutions 68 and 509 of the Conselho Nacional do Comercio Exterior (CONCEX) provide that CACEX may draw upon the resources of the Fundo de Financiamento a Exportacao (FINEX) to subsidize short- and long-term loans for both Brazilian exporters (Resolution 68) and foreign importers (Resolution 509) of Brazilian goods. CACEX pays the lending bank an "equalization fee" that makes up the difference between the subsidized interest rate and the prevailing commercial rate. CACEX also provides the lending bank with a "handling fee" equal to two percent of the loan principal in order to encourage foreign bank participation in the program. During the period of review, the interest rates on Resolution 509 dollar loans ranged between 5.25 percent and 8.19 percent per annum, which are below our benchmark rate. Because this program provides loans at preferential rates only to exporters (or their foreign importers), we determine that it is countervailable.

We consider loans to U.S. importers to be equivalent to loans to their corresponding exporters. One of Fumagalli's importers had Resolution 509 FINEX loans on which it made interest payments in 1987. Neither Borlem nor its importers used this program during the period of review. Since Resolution 509 loans to U.S. importers are given in U.S dollars, we chose as a benchmark interest rate the average quarterly interest rate for commercial and industrial short-term dollar loans, as published by the United States Federal Reserve Board. The average rate was 10.47 percent per annum in 1986 and 9.81 percent per annum in 1987.

To calculate the benefit, we multiplied the value of the loan principal on which interest payments were due in 1987 by the differential between the preferential interest rate and our benchmark. Since we were able to tie these loans to exports to the United States, we divided the result by Fumagalli's exports of steel wheels to the United States in 1987. On this basis, we determine the benefit to be zero for Borlem and 1.04 percent *ad valorem* for Fumagalli and all other firms.

II. Upstream Subsidy

Petitioner has alleged that steel wheel producers benefit from an upstream subsidy, as defined in section 771A of the Act, by virtue of domestic subsidies provided to producers of the major raw material imput in steel wheels: hot-rolled sheet and coil. We verified that USIMINAS supplied all of the steel used in the merchandise exported to the United States in 1987. We determine that USIMINAS benefited from two domestic subsidies in 1987: government provision of equity and import duty and IPI tax reductions under CDI.

A. Government Provision of Equity of USIMINAS

Siderurgia Brasileira S.A. (SIDERBRAS) is a government-controlled corporation under the jurisdiction of the Ministry of Industry and Commerce. Pursuant to Decree Law No. 6159 of December 6, 1974, SIDERBRAS became the holding company for the federally-owned steel corporations. SIDERBRAS is a majority shareholder of nine Brazilian steel producers, including USIMINAS, and a minority shareholder of one small Brazilian steel producer. From 1977 through 1987, SIDERBRAS made equity infusions in USIMINAS.

We have consistently held that government provision of, or assistance in obtaining, capital does not *per se* confer a subsidy. Government equity purchases or financial backing bestow a countervailable benefit only when provided on terms inconsistent with commercial considerations. Because USIMINAS' shares are not publicly traded, there is no market-determined price for its shares. Therefore, we examined whether USIMINAS was a reasonable investment (a condition we have termed "equityworthy") in order to determine whether the equity infusions were inconsistent with commercial considerations.

A company is a reasonable investment if it shows the ability to generate a reasonable rate of return within a reasonable period of time. For purposes of this determination, we reviewed the company's financial data and other factors on the record. We focused on the rate of return on equity and long-term prospects for the company in question for the period 1980 through 1987. (Petitioner alleged that USIMINAS was unequityworthy based on prior determinations by the Department. We did not investigate equity infusions from 1977 through 1979 because we have previously determined that USIMINAS was equityworthy in those years.) We examined financial ratios, profitability, and other factors, such as market demand projections and current operating results, to evaluate the company's current and future ability to earn a reasonable rate of return on investment.

Based on these factors, as applied to information on the record, we conclude that USIMINAS was unequityworthy between 1980 and 1987 (see also, *Certain Carbon Steel Products from Brazil; Final Affirmative Countervailing Duty Determinations* (49 FR 17988; April 26, 1984) (USIMINAS unequityworthy between 1980 and 1982); *Final Affirmative Countervailing Duty Determination; Certain Agricultural Tillage Tools from Brazil* (50 FR 34525; August 26, 1985) (USIMINAS unequityworthy in 1983); *Certain Carbon Steel Products from Brazil; Final Results of Countervailing Duty Administrative Review* (52 FR 829; January 9, 1987) (USIMINAS unequityworthy in 1984). Accordingly, we determine that the actions of the Government of Brazil in taking an equity position in USIMINAS in the years 1980 through 1987 were inconsistent with commercial considerations and may confer a subsidy.

To the extent that we find government investment to be commercially unreasonable and the government's rate of return on its investment less than the national average rate of return on investment, we consider the investment to provide a countervailable benefit. Starting in the year such an infusion is made, we examine the "rate of return shortfall," which is the difference between the national average rate of return on equity and the company's rate of return on equity. We continue to examine the shortfall in each year of a 15-year period, the average useful life of capital assets in integrated steel mills according to the Asset Guideline Classes of the U.S. Internal Revenue Service. For example, we would examine the rate of return shortfall for the 1980 equity infusion in each year through 1994. If no shortfall exists for any year under review during the 15-year period, there is no countervailable subsidy for that particular year. If a shortfall does exist for the year under review, we multiply the rate of the shortfall by the amount of the original equity infusion to find the benefit for the review period.

For purposes of this determination, we consider the amounts received from SIDERBRAS as "advances for future capital increase" and "capitalized funds" in a particular year as the amount of the equity infusion in that year. According to generally accepted accounting principles in Brazil, these amounts become part of a firm's capital account at the time of receipt, and they appeared as part of USIMINAS' capital account in its financial statements. That the amounts in these accounts are later transferred to the paid-in capital account with the formal issuance of shares has no impact on the total amount in the capital account. Furthermore, when determining the rate of return on equity, it is standard accounting practice in Brazil to include advances for future capital increase and capitalized funds as equity in that calculation.

Due to inflation, the nominal values of the original equity infusions in USIMINAS have increased substantially. All companies in Brazil must regularly restate the value of certain accounts (including equity) according to a standard factor for monetary correction. The index used for monetary correction is the readjusted value of Brazilian Treasury bills, *Obrigacoes do Tesouro Nacional* ("OTN," formerly ORTN). For each year's equity infusions, we converted the actual cruzeiro (or cruzado, after the February 1986 currency reform) amount received into an OTN equivalent by dividing the amount received by the average value of the OTN in that year. To obtain the 1987 cruzado value of the government's equity infusions since 1980, we multiplied the OTN equivalents by the average cruzado value of the OTN in 1987.

We measured USIMINAS' rate of return by dividing its net loss in 1987 by its total capital and compared the result with the national average rate of return on equity in Brazil in 1987, as reported in a September 1988 special annual edition of *Exame*, a Brazilian business publication. USIMINAS' rate of return was lower than the national average. We then multiplied this rate of return shortfall by the 1987 cruzado value of all equity infusions (back to 1980) that we have found to be inconsistent with commercial considerations.

However, because USIMINAS' net loss was very large during the 1987 review period, the benefit calculated using the rate of return shortfall methodology exceeded the amounts we would have calculated for the review period had we treated the equity infusions as outright grants rather than equity. Under no circumstances do we countervail in any year an amount greater than what we would have countervailed in that year had we treated the government's equity infusions as outright grants. Therefore, we have capped the subsidy for the review period at the level that would have resulted if we had treated the equity infusions as grants.

To determine the grant cap for the review period, we allocated the OTN equivalents of the equity infusions in each year from 1980 through 1987 using a declining balance methodology and the 15-year allocation period. Because there is no nongoverment long-term cruzado borrowing in Brazil, we have used as a discount rate the highest rate the Brazilian government pays on its longest-term OTNs' 8 percent on 5-year OTNs. (The discount rate we normally use in our grant methodology is a rate that incorporates both the "real" and inflation components of an interest rate, and we apply this discount rate to the original amount of the grant. However, by converting the equity amounts to OTNs as a means of determining their value over time, we have accounted for the effects of hyperinflation on the amount of the original equity infusions. Therefore, we have used as our discount rate the interest rate on OTNs, which is a real interest rate, as the basis for allocating the inflation-adjusted OTN values over time.) We then converted the OTN benefit allocated to 1987 into cruzados by multiplying that benefit by the average value of the OTN in 1987. Finally, we divided this cruzado benefit by the value of USIMINAS' total sales in 1987. On this basis, we determine the subsidy to USIMINAS from this program to be 5.82 percent *ad valorem*.

B. Fiscal Benefits by Virtue of a Project Approved by CDI

Under Decree Law 1428, the Industrial Development Council ("CDI") provides for the exemption of up to 100 percent of the customs duties and up to 10 percent of the IPI tax, a value-added tax on domestic sales, on certain imported machinery for specific projects in 14 industries approved by the Brazilian goverment. The recipient must demonstrate that this machinery or equipment is not available from a Brazilian manufacturer.

Decree Law 1726 repealed this program in 1979. However, companies whose projects were approved prior to the repeal continue to receive benefits from this program pending completion of the project. USIMINAS received benefits under this program during 1987. Because this program is limited to specific enterprises of industries, we determine that it is countervailable.

To calculate the benefit, we divided the total amount of import duty and IPI tax reductions in 1987 by USIMINAS' total 1987 sales. On this basis, we determine the subsidy to USIMINAS from this program to be 0.79 percent *ad valorem*.

C. Competitive Benefit

Section 771A(a)(2) provides that the domestic subsidies described above must bestow a competitive benefit on the merchandise. Section 771(A)(b) states:

> * * * a competitive benefit has been bestowed when the price for the input product referred to in subsection (a)(1) for such use is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

To determine the price that steel wheel producers would have paid in an arm's length transaction, we first look to see at what price a steel wheel producer could have bought the input from an unsubsidized seller in Brazil. During the review, the only producers in Brazil of hot-rolled sheet and coil were USIMINAS, Companhia Siderurgica

Paulista (COSIPA) and Companhia Siderurgica Nacional (CSN). Although we have not determined in this investigation whether COSIPA and CSN received countervailable subsidies, we determined in a past investigation and administrative review (see the final determination and final results of review on *Certain Carbon Steel Products* (op. cit.)) that both companies benefited from countervailable government provisions of equity. Based on our equity methodology, most of these equity infusions would continue to provide benefits in 1987 to the extent that these companies' rates of return fell below the national average rate of return on equity. Furthermore, a report submitted by the GOB, "Evaluation of the Financial Restructuring of the SIDERBRAS Group: Report to the SIDERBRAS Directors" (February 1989), indicates that both COSIPA and CSN received additional equity infusions from SIDERBRAS through 1988—in fact, more than USIMINAS received. The report also indicates that COSIPA and CSN had worse profitability, liquidity and leverage ratios than USIMINAS in 1987.

Based on this information, we believe it is reasonable to assume that other domestic suppliers of hot-rolled sheet and coil received subsidies during the period of review. Therefore, the prices charged by these companies would not be an appropriate benchmark for determining whether a competitive benefit arises through the steel wheels producers' purchase of this input from USIMINAS.

In the absence of an unsubsidized domestic price, we look to world market prices as a potential benchmark. Generally, we will use the price of one of the world's lowest-cost producers. During the review period, one of the lowest-cost producers of steel was the Republic of Korea (ROK). If the world market price is lower than the price that producers of the merchandise actually paid for the input product, we would conclude that there is no competitive benefit on the merchandise. If the world market price is higher than the price that producers paid for the input product, we would conclude that there is a competitive benefit on the merchandise. The amount of the competitive benefit would depend on the difference between the subsidized price and the world market price.

As the best estimate of the price of Korean steel in Brazil, we used the average monthly c.i.f. price for hot-rolled sheet and coil, with the specifications needed to produce wheels, imported into the United States from the ROK in 1987. We found that the Korean prices were on average over 50 percent higher than domestic Brazilian prices in 1987. Therefore, we conclude that there is a competitive benefit.

D. Significant Effect

For purposes of determining whether the competitive benefit has a significant effect on the cost of producing the merchandise, we multiplied the *ad valorem* subsidy rate on the steel input by the proportion of the total production costs of steel wheels accounted for by the steel input. Multiplying those proportions by the total domestic subsidy for USIMINAS yields a rate of 2.66 percent for Fumagalli and 2.31 percent for Borlem.

In the *Final Affirmative Countervailing Duty Determination; Certain Agricultural Tillage Tools from Brazil* (50 FR 34525; August 26, 1985), we established thresholds regarding the existence of a significant effect. We stated that we would presume no significant effect if the *ad valorem* subsidy rate on the input product multiplied by the proportion of the input product in the cost of manufacturing the merchandise accounted for less than one percent. If the result of this calculation is higher than five percent, we would presume that there is a significant effect. If the result is between one and five percent, we would examine the effect of the input subsidy on the competitiveness of the merchandise. Since in this case the input subsidy allocated to the merchandise yields rates that are between one and five percent for both Fumagalli and Borlem, we have examined the price sensitivity of steel wheels.

A steel wheel is a relatively unsophisticated product made by welding a circular rim to a disc. This process requires standard technology that is available both in Brazil and the United States. The quality of the product made in Brazil is similar, if not identical, to that made in the United States. In fact, the wheels imported into the United States from Brazil are made to standard specifications. These specifications include size, thickness, Society of Automotive Engineer grades of steel, and, in certain instances, the casting process for making the steel used in the wheels. For example, we verified that, in at least one contract, a U.S. importer required that continuous cast steel be used in the wheels.

USIMINAS, which supplied all of the steel used in the wheels exported to the United States during the period of review, has a special line of steel used exclusively for the production of wheels. Fumagalli, which accounted for over 95 percent of the wheels exported to the United States from Brazil during the period of review, is owned entirely by Rockwell International Corp., A U.S. firm. Fumagalli exports over 90 percent of the wheels it produces, mostly to the United States. Rockwell maintains strict quality control over the wheels produced by Fumagalli. In Fumagalli's product manual, every type of wheel produced is matched to specific models of cars produced by the world's major automobile manufacturers.

The only U.S. importers of steel wheels from Brazil are original equipment manufacturers (OEM's) of automobiles. The ITC found in its preliminary determination (*Certain Steel Wheels from Brazil; Investigation No. 701-TA-246 (Preliminary)*) that a wheel producer must be approved by the OEM's purchasing and engineering departments before it can submit a bid. Once the supplier is approved, it achieves the same status as all other approved suppliers. Both Fumagalli and Kelsey-Hayes, the petitioner, are approved suppliers for all the major U.S. automobile manufacturers. The ITC found that an OEM's request for a quotation usually includes a set of specifications and criteria for the wheels.

The ITC also found that steel wheel producers have little bargaining power in the contract negotiations because of the market power of the large automobile manufacturers. The overwhelming majority of the demand for steel wheels stems from the demand for new automobiles. The ITC report quotes the petitioner as saying "* * * because the market for steel wheels is static, from the standpoint that there are no new potential customers for wheels, price competition is severe." (p.A-34).

Although we recognize, as stated in the ITC report, that there are nonprice factors, such as long-standing supplier relationships and reliability in delivery, that may affect the outcome of the bid, we conclude, given the uniformity of the Brazilian and U.S. product, that price is the single most important factor in determining which supplier wins the bid. Therefore, we conclude that subsidies to the input supplier have a significant effect on the competitiveness of Brazilian steel wheels.

In summary, we have determined that: (1) There are domestic subsidies to input suppliers; (2) there is a competitive benefit bestowed on producers of steel wheels; and (3) subsidies to input producers have a significant effect on the cost of manufacturing steel wheels. Therefore, we determine that producers of steel wheels in Brazil benefit from an upstream subsidy.

Since the amount of the differential between the Korean and Brazilian prices is higher than the amount of domestic subsidy on USIMINAS steel, we conclude that there is a full pass-through of the subsidy from USIMINAS to the wheel producers. To determine the amount of the upstream subsidy, we multiplied the total domestic subsidy on the input product by the proportion of the *value* of the merchandise accounted for by the input product. (Although we use the *cost* of the merchandise for purposes of determining whether the input subsidy has a significant effect on the merchandise, we calculate the upstream subsidy, as we do most other subsidies, on an *ad valorem* basis.) We determine the upstream benefit for Borlem to be 1.82 percent *ad valorem* and 1.72 percent *ad valorem* for all other firms.

III. Programs Determined Not To Be Used

We determine that manufacturers, producers and exporters in Brazil of steel wheels did not receive benefits during the review period under the following programs:

(1) Accelerated depreciation for Brazilian-made capital goods;

(2) Financing for the storage of merchandise destined for export ("Resolution 330");

(3) Federal stock (EGF) loans; and

(4) Industrial enterprise (FST) loans.

COMMENTS

Comment 1: The Government of Brazil (GOB) argues that the Department overstated the amount of the benefit attributable to the income tax exemption for export earnings. The Department mistakenly divided the benefit received by Fumagalli by the total exports of Borlem. Furthermore, the Department should allocate the benefits from this program over total sales instead of total exports. Since the program rebates direct taxes, it is a domestic subsidy, which requires the Department to allocate the benefit over total sales. In addition, effective January 1, 1988, the GOB decreed that export earnings are no longer fully exempt from income taxes and are now subject to a 3 percent tax. Therefore, the Department should take into account this program-wide change in calculating the rate of cash deposit of estimated countervailing duties for this program.

Department's Position: We have corrected the clerical error made in our preliminary determination by dividing the benefit to Fumagalli by that firm's total exports. We have considered and rejected in other Brazilian countervailing duty cases the GOB's claim that the income tax exemption is a domestic subsidy. See, *e.g., Certain Carbon Steel Products From Brazil* (op. cit.). The GOB has provided neither new evidence nor new arguments that convince us to reconsider this issue. With respect to program-wide changes in this program, we do not have sufficient information to recalculate the cash deposit rate. Because none of the companies we verified has yet filed income tax statements incorporating this change, we are unable to measure the effect of the change.

Comment 2: The GOB argues that the Department overstated the benefit from CACEX preferential export financing by failing to take into account the length of each loan when calculating the benefit. In addition, the GOB claims that, in calculating the short-term interest rate benchmark, the Department should not include the IOF tax. The IOF functions as an indirect tax, and neither the exemption nor the rebate of an indirect tax is considered a subsidy under the General Agreements on Tariffs and Trade and U.S. law. Inclusion of the IOF in the benchmark improperly countervails an exemption of an indirect tax applicable to exports. In addition, the Department should also take into account a reduction in the equalization rate from 15 to 7.5 percent, effective November 30, 1988, for purposes of calculating the cash deposit rate.

Department's Position: We have corrected the clerical error of failing to take the length of the loans into account. We have considered and rejected in other Brazilian countervailing duty cases the GOB's claim concerning the propriety of including the IOF tax in our benchmark. See, *e.g., Certain Castor Oil Products From Brazil; Final Results of Countervailing Duty Administrative Review* (48 FR 40534, September 8, 1983). The Brazilian government has provided neither new evidence or new arguments that convince us to reconsider this issue. We have not taken into account the reduction in the equalization rate because it is our policy to consider only those program-wide changes that occur prior to our preliminary determination, which was published on October 28, 1988.

Comment 3: The GOB argues that loans issued pursuant to the Banco do Brasil's CIC-CREGE 14-11 circular (later modified by circular CIC-OPCRE 6-2-6) do not constitute a government program and, therefore, cannot confer a subsidy on exports of steel wheels. The Banco do Brasil receives no financial support from the GOB for this program and operates the program in a manner consistent with commercial considerations. Even assuming, *arguendo*, that the program is countervailable, the Department has overstated the benefit by using an incorrect benchmark. The Department has used the discounting of accounts receivable rate in past investigations and administrative reviews because there was no published short-term commercial interest rate information available. In this investigation, the Department should use the "taxa ANBID" rate published in *Gazeta Mercantil*, which it has verified is the general commercial rate for short-term loans. Furthermore, if the Department uses the discounting of accounts receivable as its benchmark, it should adjust its methodology for compounding interest.

Department's Position: We have considered and rejected in other Brazilian countervailing duty cases the GOB' argument concerning whether this program is countervailable. *See, e.g., Final Affirmative Countervailing Duty Determination; Brass Sheet and Strip From Brazil*, (51 FR 40837, November 10, 1986). The Brazilian government has provided neither new evidence nor new arguments that convince us to reconsider this issue. As noted in the discussion in section I(3) of this notice, we have used the "taxa ANBID" rate as our benchmark.

Comment 4: The GOB argues that the Department overstated the benefit attributable to the IPI export credit premium program by dividing the amount of the benefit received on Fumagalli's total exports by the firm's exports to the United States. In addition, the Department verified that Fumagalli will not be eligible for the IPI credit premium on exports made after December 31, 1989. The Department should adjust the deposit rate automatically on January 1, 1990 to reflect this change.

Department's Position: We have corrected our calculation of the benefit from this program by dividing the IPI export credit premiums received on shipments of the subject merchandise to the United States by exports of this merchandise to the United States (see section I(4) of this notice). Regarding Fumagalli's future ineligibility for the IPI export credit premium, it is our policy to take into account only those program-wide changes that occur prior to our preliminary determination. Any program-wide change that is scheduled to occur in 1990 can only be addressed in the context of an administrative review.

Comment 5: The GOB argues that Decree Law 1428, which allows import duty exemptions on imported capital equipment of firms with projects approved by the Conselho de Desenvolvimento Industrial (CDI), is not limited to an industry or group of industries and is therefore, not countervailable.

Department's Position: We disagree. We have found that CDI benefits are provided by the government to specific industries (see section II.B.).

Comment 6: The GOB argues that the Department should adjust the deposit rate to take into account a program-wide change, effective May 18, 1988, whereby the exemption of imported capital equipment from the IPI tax is no longer specifically provided under the BEFIEX and CDI programs and is now generally available.

Department's Position: We disagree. Although we verified that program-wide changes took place, the availability of this exemption is still subject to certain conditions. At this time, we do not have sufficient information to make a determination that this program is not specifically provided and no longer countervailable. For this reason, we are not adjusting the rate of cash deposit of estimated countervailing duties for this program.

Comment 7: The GOB argues that FINEX financing under Resolutions 68 and 509 is not countervailable because the program is consistent with the Arrangement on Guidelines for Officially Support Export Credits, which is not considered an illegal export subsidy under item (k) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code). The Department verified that the lending rate for FINEX financing is LIBOR plus a spread of 0.5 precent, a rate comparable to commercial lending rates for importers in the United States. Furthermore, the Department verified that, effective January 4, 1989, the FINEX program as suspended. This should be taken into account in any calculation of the rate of cash deposit of estimated countervailing duties.

Department's Position: We disagree. Since the FINEX loans in this case are short-term loans, they are not covered by the Arrangement and, hence, do not fall within the second paragraph of item (k). Regarding the preferentiality of FINEX lending rates, the Banco Central do Brasil (BCB) provides all or some portion of a spread (the equalization fee) above an interest rate based on LIBOR. Exporters and importers were unable to demonstrate either the value of the spread or the portion of the spread that was retained by the intermediary bank. Therefore, we have assumed that the full benefit from the equalization fee was passed through to the importer. Since Resolution 509 short-term loans are given in U.S. dollars, we maintain that the appropriate benchmark is the average rate for comparable short-term loans in the United States, as published by the Federal Reserve. We have no documentation regarding an average lending rate based on LIBOR. Concerning the suspension of this program, it is our policy to take into account only those program-wide changes that occur prior to our preliminary determination.

Comment 8: The GOB argues that, in alleging an upstream subsidy, petitioner never made an allegation that the GOB's equity infusions in USIMINAS provided a subsidy during the period of review. On this basis, the GOB contends that the statutory requirements for initiating and upstream subsidy investigation were not met on this issue. The GOB further argues that if petitioner intended to imply, by referring to the section 751 administrative review on *Certain Carbon Steel Products from Brazil; Final Results of Countervailing Duty Administrative Review* (52 FR 829; January 9, 1987), that USIMINAS was unequityworthy for the years 1980 through 1984, then petitioner's implied allegation only provides a basis for investigation equity infusions in those years.

Department's Position: We disagree. In making the upstream subsidy allegation, petitioner cites the administrative review on carbon steel products. Petitioner based the allegation on the amount of the domestic subsidies determined in that review. Although the various domestic subsidies were not specifically identified, a clear reading of the results of that review leaves no doubt that petitioner was alleging the existence of equity infusions in an unequityworthy company. Subsidies from equity infusions from 1980 through 1984 were the single largest component of the total domestic subsidy found in that review. With respect to the investigation of equity infusions since 1984, the Department would be remiss in its administration of the countervailing duty law if it did not examine additional equity infusions in a company it had previously determined to be unequityworthy.

Comment 9: The GOB asserts that the Department's determination that USIMINAS was not equityworthy from 1980 through 1984 in the administrative review of carbon steel products was incorrect and should be reversed. The GOB contends that the methodology employed by the Department in determining the USIMINAS was not equityworthy was erroneous because it: (1) Placed undue reliance on marginal returns on equity in the late 1970s to evaluate long-term future earnings potential; (2) relied on financial ratios that were distorted by the inclusion of expansion project assets not yet in operation; (3) improperly used subsequent operating performance to judge the reasonableness of SIDERBRAS' rate of return expectations at the time the equity was provided; (4) did not address evidence submitted by respondents concerning projections of long-term growth in steel demand in both the domestic Brazilian and international markets; and (5) ignored independent studies by the World Bank and other reputable sources which had favorable views on the prospects of the Stage III project as well as USIMINAS' performance and projected relatively high rates of return in the long-term on the investments made by SIDERBRAS.

The GOB argues that the factors that should be examined in assessing the prospects for future performance include: the long-term market environment, the company's anticipated costs of production, the company's ability to operate efficiently, and the company's ability to operate profitably.

Department's Position: We disagree. We stand by the methodology used in our determination in the administrative review of carbon steel products, which was upheld by the Court of International Trade in *Companhia Siderurgica Paulista, S.A., et al. v. United States*, 700 F. Supp. 38, Slip Op. 88–158, November 9, 1988. Although USIMINAS was not a party to this court proceeding, the methodology used in the administrative review to determine that the GOB's equity infusions in COSIPA, CSN and USIMINAS were countervailable was identical for all three companies.

Comment 10: The GOB argues that the Department incorrectly determined the USIMINAS was not equityworthy from 1980 through 1984. The Department evaluated government investments by SIDERBRAS from the point of view of a private outside investor instead of a private owner-investor. The GOB argues that its motive, as an owner-investor, is to maximize average returns on its past and future investments in USIMINAS, not to maximize marginal returns on investments, as an outside investor would. Therefore, it is unreasonable to expect SIDERBRAS to treat past equity infusions as sunk costs.

The GOB contends that the equity infusions in these years are directly tied to the massive long-term Stage III expansion project undertaken by USIMINAS. The government's decision to invest in Stage III was made in 1975. The decision relied on favorable long-term domestic and international market projections and World Bank appraisals which showed favorable financial returns for the projects. The GOB further contends that if it no longer provided equity, consequently forcing the Stage III project to a halt it would forego the future benefits from the expansion project, and therefore, realize no return on its past investments.

Department's Position: We disagree. Both a rational outside investor and a rational owner-investor make investment decisions at the margin. The relevant question for both types of investors is: What is the marginal rate of return on each cruzeiro/cruzado invested? An investor in USIMINAS does not ignore the potential return from the assets that the company has already acquired. The potential for a favorable return from those assets is an integral part of the investment calculus. However, a rational investor does not let the value of past investments affect present or future investment decisions. The decision to invest is only dependent on the marginal return expected from each additional equity infusion. Therefore, new equity infusions contemplated by investors such as the Brazilian government should not be affected by past investments or sunk costs.

We do not dispute the findings of the long-term market projections or World Bank project reports made in 1975. The GOB designed the Stage III expansion projects as a keystone in its Second National Development Plan (1971–1979). The plan explicitly called for steel investments with the objective of national self-sufficiency by 1979. With an anticipated completion date of 1979, Stage III was designed to supply steel for the Development Plan's large public sector investment program. The decision to sign the contracts for Stage III was based on the national goal of public welfare maximization and not necessarily on commercial considerations.

Although the decision to invest was made in 1975, actual construction began in the late 1970s. By that time, the investment climate had deteriorated, international markets for steel began to decline, and public sector investment dried up. Stage III may still have yielded positive financial returns despite the financial and economic conditions at the time. However, because a sufficient rate of return on equity depends on the performance of the firm as a whole, an investor will invest based on the rate of return for the entire firm, not the rate of return for an individual project such as Stage III.

Current and anticipated future economic conditions and the effects of massive expansion projects on a steel company are just as important as projected long-term markets in an investor's prediction of USIMINAS' long-term viability and, therefore, the decision to invest in the company. Consistent with the desire to maximize overall profits, a rational owner-investor must constantly reevaluate projects such as Stage III in light of other investment opportunities before determining whether those projects should be continued, delayed or abandoned.

Comment 11: The GOB argues that the Department's evaluation of the performance of USIMINAS during the Stage III expansion program was short-sighted in that it incorrectly focused on financial performance instead of current operating performance. The short-term static financial ratios and overall operating performance that the Department relied on are insufficient measures of long-run investment potential and future company performance.

If the Department continues to depend on short-term indicators, it should adjust USIMINAS' overall operating performance by eliminating nonproductive assets (*i.e.*, assets under construction) and related liabilities from the calculation of the financial ratios. When made, these adjustments reveal a healthy current operating performance for USIMINAS during the periods the Department found the company not equityworthy. More importantly, such adjustments show strong profit margins and asset turnover, current operating performance measures which are fundamental determinants in the rate of return on equity.

The GOB contends that the economic constraints existing in the late 1970s and early 1980s, such as government price increases, high real domestic and international interest rates, a temporary cyclical downturn in the steel market, and lower-than-expected government equity infusions were unanticipated transient problems that were insufficient to cause SIDERBRAS to abandon its long-term investment plans. These transient problems and their effects on the companies are relatively unimportant because they do not have a direct bearing on the company's long-term prospects.

The GOB believes that the logical conclusion from the evaluation of equityworthiness is that the only problem faced by the firms was undercapitalization, or lack of equity infusions. Therefore, the GOB believes that SIDERBRAS should have infused more, not less, equity into the companies.

Department's Position: We disagree. The most significant factor in determining the required rate of return on an investment is the degree of risk. The greater the risk of the investment, the higher the expected rate of return. From the point of view of an investor, the purchase of equity is highly risky compared to other types of investments.

In contemplating an equity purchase, an investor will evaluate past and present company performance, anticipated future economic conditions, and overall investment climate. Important determinants in the evaluation include the financial stability of the company (*e.g.*, asset structure, funding sources, and risk of insolvency), past earnings, and the amount of financial leverage in the company's capital structure. Therefore, we disagree with the Brazilian government that present and past performance indicators are relatively unimportant in an investment decision.

Investors will also assess the potential future performance of the company. In this case, the GOB undertook a massive expansion program designed to exploit the projected increase in the demand for steel. In evaluating the equityworthiness of USIMINAS, we do not rely exclusively on the future prospects of the expansion project. We also cannot ignore, just as an investor would not have ignored, the effects of such an expansion on the company's present operations and future viability. An investor purchases equity based on the rate of return of the firm as a whole, not on the financial returns from a specific project.

From an investor's point of view, there is no relevant distinction between financial and operating results. Rather, an investor will look to the rate of return on equity, which is primarily a function of three variables: profit margin (income/sales), asset turnover (sales/assets), and financial leverage (assets/equity).

Evaluation on the basis of current operating results (profit margin and asset turnover), without considering nonoperational assets and accompanying liabilities, may be an appropriate approach for managing or analyzing profit centers with a company. An investor, however, is concerned with the company's overall performance. An investor must evaluate the effects of the Stage III expansion project on the whole company. Nonperforming assets not only drag down overall operating performance, but the chance that they might never come on-stream creates additional uncertainty for future earnings and therefore increases the risk of the investment.

The rate of return on equity equation shows the fundamental interrelationship between financial performance (financial leverage) and operating performance (profit margin and asset turnover). The decision to continue Stage III in the face of inadequate equity infusions from the Brazilian government led to substantial increases in the company's financial leverage. There is a direct relationship between financial leverage and earnings variability. Therefore, both are also directly related to investment risk.

In the late 1970s and early 1980s the Brazilian steel industry was characterized by Stage III construction delays, marginal or negative earnings, and a mounting economic and financial crisis. The lack of funding in the industry became critical. (The GOB had a history of underfunding steel expansion projects.) By 1982, USIMINAS would have required hundreds of millions of dollars in equity to correct its financial position. Although it is now clear that the company were severely undercapitalized, we cannot base our equityworthiness decision on what the financial standing of the company might have been if this were not the case.

USIMINAS responded to its condition in the late 1970s by contracting variable-rate debt at a time of high real interest rates and using increasing amounts of short-term debt. Not only was USIMINAS undercapitalized, but it mismatched long-term assets with expensive short-term debt.

During this time, an investor would have found that USIMINAS was incapable of covering the additional debt expense with internally-generated funds. The company had a low probability of increasing earnings over the short- and medium- term from domestic sales because of the squeeze between supplier price increases and the government's policy of steel price suppression. Further, it became increasingly evident that there was a long-term decline in the world-wide demand for steel, continuing the depression of steel prices in the international market.

A project such as Stage III can have future positive returns only if the company does not become insolvent. In this case, the continuation of Stage III severely jeopardized USIMINAS' financial standing. Even if we disregard profit margins and asset turnover, we cannot disregard the adverse effects of increased financial leverage on the company's equity standing. The additional risk in the highly leveraged company would have dissuaded any private investor from purchasing equity in USIMINAS during the periods we consider it not to be equityworthy.

Comment 12: The GOB argues that its investments in USIMINAS in 1987 were not on terms "inconsistent with commercial considerations." The investments were part of the SIDERBRAS Restructuring Plan, by which USIMINAS transferred some of its debt to SIDERBRAS. This transfer was reflected as a reduction in long-term and short-term debt and an equal increase in the equity held by SIDERBRAS. The Restructuring Plan also provided for the recapitalization of SIDERBRAS; operational improvements and investments to improve operating efficiency and reduce costs; a commitment to support a realistic pricing policy to allow USIMINAS to recover its costs; and a commitment that SIDERBRAS not undertake investments unless adequate funding is available. The effect of these measures has been to greatly improve the ability of USIMINAS to meet its debt service obligations and earn a reasonable rate of return. A study by independent financial experts has projected substantial returns on equity over the next ten years for USIMINAS. Thus, when the GOB invested additional equity in USIMINAS under the Restructuring Plan, it had a reasonable expectation of a very high real return on its investment.

Department's Position: We disagree. From the perspective of a rational private investor, USIMINAS was no more attractive as a potential investment in 1987 than it was in any of the earlier years in which we determined it to be unequityworthy. Its financial ratios since 1984 indicated no appreciable improvement and, in many areas, had deteriorated. The company had become even more severely leveraged and, in those years in which it did not have a loss, did not demonstrate the ability to generate more than minimal profits.

While the GOB's decision to convert some of USIMINAS' debt to equity clearly addressed one of the basic problems facing USIMINAS, there were still considerable risks associated with any further investment in USIMINAS. The debt conversion was only one component of the Restructuring Plan, and its success was dependent on other contingencies, such as a proper pricing policy. The suppression of steel prices throughout the 1980s as part of the GOB's policies to counter inflation, and the GOB's failure to provide scheduled equity infusions due to budgetary constraints, led to results considerably different from the attractive rates of return projected for USIMINAS in the studies conducted in relation to earlier investment plans.

In this respect, there is a clear distinction between a reasonable private investor's expectations and those of a government owner-investor. In light of the past, a private investor would have to consider the possibility that future macroeconomic concerns of the GOB could jeopardize any investment in an ailing, if recovering, company, whereas the GOB at any time could decide to renege on its commitments to the improvement of USIMINAS' financial health in favor of national economic and social obligations. In doing so, the GOB might again choose to sacrifice the interests of USIMINAS to some more important public welfare goal.

The GOB refers to a study submitted by independent financial experts to SIDERBRAS in February 1989 evaluating the results of the Restructuring Plan through 1988. This study projects substantial rates of return on equity for USIMINAS as a result of the Restructuring Plan. While the projections of this study may prove accurate, they were not contemporaneous with the Restructuring Plan, and we cannot consider the results of this study to be the basis on which the GOB made its investment decisions in 1987. The GOB provided us with no studies contemporaneous with its investment decision.

Comment 13: The BOG claims that the amounts for "advances for future capital increase" that appear in the "Statement of Changes in Financial Position" are end-of-year amounts that in certain years include interest and monetary correction accrued during the year. Therefore, the GOB argues that the Department should use the OTN rate at the end of the year when converting these amounts into OTN equivalents.

Department's Position: We disagree. Advances for future capital increase are received at various points during the year. It is not apparent from the "Statement of Changes in Financial Position," nor could we verify, that in some years these amounts included interest and monetary correction. We have assumed that the amounts of the advances that we used for calculating the value of the equity infusions are the nominal amounts received during the year. Therefore, we used the average OTN rate for the year when converting these amounts into OTN equivalents.

Comment 14: Respondents argue that it is inappropriate to include investments made during the year of review when calculating the benefit from equity infusions. Respondents claim that it is improper to assume that the investor would expect a return on equity for investments made during the year equal to the rate of return on investments for a full year. Therefore, respondents argue that the Department should either exclude such equity infusions or calculate a prorated return based on the number of months since the equity infusion was made.

Respondents further argue that, when calculating USIMINAS' loss as a percentage of its total capital, the Department should add back any losses deducted from capital. To do otherwise would overstate the percentage of the loss.

Department's Position: We disagree. Adjusting the rate of return calculation to exclude or prorate equity infusions during the year would either reduce the rate of return on equity in profitable years or increase the rate of loss on equity in unprofitable years. The methodology proposed by respondents runs counter to standard accounting practices in Brazil. By using USIMINAS' total capital (including all equity received and losses incurred), we calculated a negative rate of return for USIMINAS in 1987 that was identical to that reported in the September 1988 edition of *Exame*.

Comment 15: The GOB argues that the Department should change its policy of using as its benchmark a national average rate of return and use instead an average rate of return applicable to heavy industry, thus recognizing the structural differences and increased capital requirements of heavy industries.

Department's Position: We disagree. A national average rate of return is a more accurate reflection of the return that a reasonable investor could expect from a prudent investment than an industry-specific rate. A national average rate of return reflecting the different rates of return and levels of risk in the whole economy is a better benchmark with which to compare rates of return for particular investments. Only by comparing the expected returns and risks across the whole economy can the investor decide where to invest his money most effectively. In contrast, an industry-specific benchmark rate would not serve as a reasonable basis for comparison because it does not take into account the variety of investment options available to an investor.

Furthermore, the use of an industry-specific average rate of return would be especially inappropriate in this case because a large portion of the steel industry in Brazil is controlled by the government. For this reason, the use of the steel sector rate of return would not provide an objective standard. It is far more reasonable to use the national average rate of return because it includes the rates of return for government-owned firms and private firms as well as for profitable and unprofitable firms.

Comment 16: Respondents argue that the Department should use 1988 as the review period for the upstream subsidy portion of this investigation. Calendar year 1988 is the most recently completed fiscal year prior to the date of the upstream subsidy questionnaire response. Information from 1988 provides the most accurate basis for determining the existence of an upstream subsidy.

Petitioner contends that the Department cannot measure upstream subsidies for a different year than that used for all other subsidies.

Department's Position: We agree with petitioner. We announced in our initiation notice on August 24, 1988 that the period of review was calendar year 1987. We must use the same period for measuring all subsidies because to do otherwise might distort the average benefit we attempt to capture in our "snapshot" view of the firm. Furthermore, we cannot use a review period that did not conclude until after our preliminary determination.

Comment 17: Fumagalli contends that, because the government controls the price of steel, the Department should treat the alleged below-market prices of steel as a direct subsidy, not as an upstream subsidy. Fumagalli notes the Department's practice in a number of cases involving products from Mexico (*e.g., Anhydrous and Aqua Ammonia from Mexico* (48 FR 28522) and *Oil Country Tubular Goods from Mexico* (49 FR 47054)). In those cases, where the Department examined the effect of the Mexican government's price control on natural gas, the Department found that low-priced natural gas was available to a wide variety of users and not limited to a particular industry or group of industries. Since the Brazilian government controls the price of steel, and steel is available to a wide variety of users, the provision of steel at government-regulated prices to wheel producers is analogous to government controls on natural gas prices in Mexico. Therefore, the Department should analyze both situations in the same way.

Department's Position: The cases that Fumagalli refers to deal with the alleged preferential pricing of inputs, which is a direct subsidy, not an upstream subsidy. The statute includes a special provision for upstream subsidies, as well as a specific three-pronged test for determining whether an upstream subsidy exists. We do not believe that the existence of price controls precludes us from invoking the the upstream subsidy provision (see our response to Comments 18 and 20).

Comment 18: Fumagalli argues that the specificity analysis that applies to any domestic subsidy also applies to upstream subsidies. Thus, an upstream subsidy is only countervailable if the benefit of that subsidy on downstream products is limited "to a specific enterprise or industry, or group of enterprises or industries."

Fumagalli cites *Certain Steel Products from the Federal Republic of Germany* (47 FR 26321), where the petitioner alleged that German steel producers benefited from subsidies provided by the German government to coal producers. In its preliminary determination in that case, the Department found there was no benefit because low-priced coal was not limited to the steel industry but was, in fact, available to a wide variety of users in the FRG.

Fumagalli contends that the legislative history of the Trade and Tariff Act of 1984 makes clear that the upstream subsidy provision did not change basic Department practice regarding subsidies. Congress intended that the specificity test be used to determine whether the low-priced input was made available only to a specific industry or group of industries. In fact, in a letter to Congress, the former Secretary of Commerce indicated that the Department intended the upstream subsidy provision to apply "where an input is provided to a particular industry or group of industries, . . . "

Petitioner argues that it is clear in the statute and in the legislative history that the specificity test applies only at the upstream level (*i.e.*, on the input product). The statute clearly states that the Department is to look at the competitive benefit from the upstream subsidy on the merchandise under investigation. To determine competitive benefit, the Department must compare the price of the input product from the subsidized producer with a benchmark price. In situations where prices of the input product are artificially depressed in the country under investigation, the statute authorizes the Department to use other sources for the benchmark price, presumably including prices outside the country. This provision would make no sense if there were a specificity requirement at the downstream level.

Department's Position: We agree with the petitioner that a second-tier specificity test is not required in the analysis of upstream subsidies. If Congress had intended to include a separate specificity test, it would have included the same specificity language in the upstream subsidy provision that is included in the definition of domestic subsidy, as provided for in section 771(5)(B) of the Act. Domestic subsidies given directly to the input producer (in this case, the steel producer) must be specifically provided, and domestic subsidies given directly to the downstream producer (in this case, the wheel producers) must be specifically provided, but subsidized inputs purchased by downstream producers need not be specifically provided in order to be countervailable.

The House Conference Report describes an upstream subsidy as a subsidy paid by a government on an input product used to manufacture the merchandise under investigation. The report states, "The potential for an upstream subsidy exists only when a sector-specific benefit meeting all the other criteria of being a subsidy is provided *to the input producer.*" (emphasis added). H.R. Rep. No. 98–1156, 98th Cong., 2nd Sess. 171 (1984). The report makes no mention of a sector-specific requirement for the downstream purchaser of the input product.

Furthermore, the Report indicates that the House Bill included a requirement that the upstream subsidy result in a "price for the intermediate product lower than the generally available price of that product in that country. * * *," but the Conferees agree to "* * * substitute for generally available price determination a determination that the upstream subsidy in the judgment of the administering authority bestows a competitive benefit on the merchandise * * *". This clarifies that Congress considered and rejected the second-tier specificity requirement.

The upstream subsidy provision was intended to codify and strengthen existing practice. See S. Rep. No. 98–485, 98th Cong. 2nd Sess. 33 (1984). Although we found in the preliminary determination on *Certain Steel Products from the Federal Republic of Germany* that subsidies to the coal industry did not benefit the steel industry because the coal was not specifically provided to the steel industry, we abandoned this analysis in our final determination (47 FR 39345, September 7, 1982). In the final determination, we found that there was no benefit not because the coal was not specifically provided, but because the price of German coal was higher than world market prices. This approach is very similar to the analysis we use to determine the existence of a competitive benefit.

Thus, despite an early flirtation with the idea of a second-tier specificity test, both Congress and the Department in the end rejected this approach in favor of the competitive benefit test.

Comment 19: The GOB argues that, since wheel producers were able to import steel at prices less than the prices paid to USIMINAS, they derived no competitive benefit from any alleged upstream subsidy. Fumagalli provided information showing that hot-rolled coil was available in January 1989 from the Republic of Korea for less than what the wheel producers paid for steel in Brazil. Furthermore, since wheel producers can obtain full reimbursement for any duties paid on imported steel through Brazil's duty drawback system (provided for in Decree-Law NR 37/66 and Decree 68,904/71), the Department should take duty drawback into account when calculating the benchmark price.

Department's Position: Fumagalli cites a price from 1989, and our period of investigation is 1987. We found that Korean prices were on average over 50 percent higher than USIMINAS' prices in 1987. Since the world market benchmark price is higher than the Brazilian price, thus making importation economically impractical, the issue of using an import price adjusted for duty drawback is moot.

Comment 20: Fumagalli argues that the existence of price controls on domestically-sold Brazilian steel makes it impossible for a Brazilian steel producer to pass through the benefit of any subsidies it receives to the downstream purchaser. In an environment where prices are determined by an intervening and superseding cause, such as government price controls, prices will not vary, regardless of the level of subsidization of any individual producer. There is no evidence that the government of Brazil sets prices for any reason other than to control inflation. Thus, absent a causal relationship between the price of steel to wheel exporters and any subsidies received by steel producers, no competitive benefit can be bestowed.

Petitioner contends that controls on the selling price of steel guarantee the pass-through of any upstream subsidy to the downstream producer. Some of the difference between the controlled price of steel and the market price is accounted for by subsidies to the steel producer. Thus, government subsidies offset differences between the two prices.

Department's Position: We disagree that the existence of price controls renders the pass-through of benefits impossible. Price controls in and of themselves are not dispositive of whether the input was sold at a subsidized price. For example, if there were unsubsidized sellers of the input product subject to the same price controls as subsidized sellers, we would determine that there is no competitive benefits because the downstream producer could have bought the input at the same price from an unsubsidized seller. Conversely, if all sellers of the input product are subsidized and all are subject to the same price controls, we cannot determine whether, or to what extent, prices in the domestic market reflect the subsidies received. In such cases, we resort to world market prices. If the world market price is higher than the domestic price of the subsidized sellers, as in this case, we conclude that the subsidy is built into the price of the input product even if the price is controlled.

Comment 21: Fumagalli contends that, in determining whether the competitive benefit has a significant effect on the merchandise, the Department should calculate the cost of steel as a percentage of the U.S. selling price of the merchandise rather than as a percentage of the cost of production of the merchandise. Fumagalli contends that this is the most accurate measure of the effect of an upstream subsidy on the competitiveness of the merchandise because it captures the degree of underselling of the merchandise in the U.S. market vis-a-vis merchandise sold by competing U.S. firms.

Department's Position: We disagree. Section 771A(a)(3) of the Act clearly states that the Department must examine whether the subsidy on the input product has a significant effect on the "cost of manufacturing or producing the merchandise."

Comment 22: Fumagalli contends that, for purposes of its upstream subsidy analysis, the Department should include general and administrative expenses in its calculation of the cost of manufacturing or producing the merchandise. According to the verification report, the Department calculated the cost of hot-rolled sheet and coil as a percentage of manufacturing costs by erroneously applying its standard practice in antidumping proceedings, in which the cost of manufacture is interpreted as the cost of production minus general and administrative expenses.

Department's Position: There is no explicit direction in the statute or the legislative history as to how to calculate the cost of manufacturing or producing the merchanise in an upstream subsidy investigation. In this case, we measured the significant effect of the upstream subsidy on the cost of the merchandise based on the cost of manufacture. We have applied our standard practice used in antidumping proceedings of calculating the cost of manufacture by deducting general and administrative expenses from the cost of production. We note that using the cost of production, including general and administrative expenses, would not change the results of our significant effect analysis in this case.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, tracing information in the response to source documents, accounting ledgers and financial statements, and collecting additional information that we deemed necessary for making our final determination.

Suspension of Liquidation

In accordance with our preliminary affirmative countervailing duty determination, published on October 28, 1988, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require a cash deposit or bond equal to the duty deposit rate. This final countervailing duty determination was extended, pursuant to section 703(h) of the Act, because of the upstream subsidy investigation. Under Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), provisional measures cannot be imposed for more than 120 days without final affirmative determination of injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after February 27, 1989, but to continue the suspension of liquidation of all entries or withdrawals from warehouse, for consumption, of the subject merchanise entered between October 28, 1989, and February 26, 1989. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and require duty deposits on all entries of the subject merchandise in the amounts indicated below:

Manufacturer/producer/exporter	Estimated net subsidy	Duty deposit rate
Borlem, S.A.	1.82	1.82
All others	17.29	17.15

ITC notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonprorietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on all entries of steel wheels from Brazil entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Date: April 7, 1989.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-9189 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-804]

Initiation of Countervailing Duty Investigation; Certain Steel Wire Nails From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Malaysia of certain steel wire nails (steel nails), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination on or before June 15, 1989.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

The Petition

On March 22, 1989, we received a petition in proper form filed by members of the Nail Committee of the American Wire Producers Association, on behalf of the U.S. industry producing steel nails. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.12), the petition alleges that manufacturers, producers, or exporters in Malaysia of steel nails receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act").

Malaysia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioner is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on steel nails from Malaysia and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are